



MEMO ENDORSED

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

March 10, 2020

Hon. Kenneth M. Karas
United States District Judge
United States District Court
United States Courthouse
300 Quarropas Street, Chambers 533
White Plains, New York 10601-4150

Re: *Johnson v. Doty et al.*
15 cv-7823 (KMK)

Dear Judge Karas:

I represent the remaining Defendant Officer Matthew Kitt ("Kitt") in this action. C.O. Kitt's motion for summary judgment is currently due to be filed and served on **March 19, 2020**.

United States Magistrate Judith C. McCarthy, conducted a telephone conference on January 9, 2020 and addressed the issues raised by Plaintiff's Motion to Compel as well as other discovery issues. Plaintiff was given until January 31, 2020 to respond to: Kitt's discovery requests dated October 30, 2019, the remaining requests stemming from Plaintiff's November 12, 2019 deposition and to return his signed deposition. In addition, Kitt was given until January 31, 2020 to provide various documents to Judge McCarthy for her *in camera* review¹. Plaintiff responded to Kitt's discovery requests indicating that either he did not have responsive documents or that the documents requested were "privileged²."

On March 9, 2020, Judge McCarthy held a telephone conference regarding any outstanding discovery issues. Plaintiff reiterated during the conference that he did not have access to these

¹ A ruling on the *in camera* documents is expected this week.

² At his deposition, Plaintiff testified about written complaints/requests he allegedly made/forwarded to various correction officials regarding the subject religious service as well as at least one log book entry that he stated would establish his claim against Kitt.

documents during his incarceration and the person to whom he sent these documents was unable to locate them. However, he represented that he would attempt to locate these purported documents once he was released from jail within a month. Based upon this representation, Judge McCarthy directed Plaintiff to search for and produce any relevant documents upon his release.

Since Kitt's motion for summary judgment is due to be filed and served on **March 19, 2020** and because Plaintiff has had ample opportunity to provide these alleged documents, Kitt respectfully requests that this Court issue an order precluding Plaintiff from submitting any such documents, if they exist. Kitt would be prejudiced by the inclusion of these documents if Plaintiff is allowed to produce same after such an inordinate delay.

In the alternative, should the Court allow Plaintiff additional time to search for and obtain these alleged documents, Kitt respectfully requests additional time to file his motion for summary judgment so that this office can review them and ascertain whether to include them in Kitt's motion for summary judgment. While we question whether such documents exist, it would be patently unfair to allow Plaintiff to rely on documents/evidence which he has failed to disclose during discovery.

Should the Court permit Plaintiff additional time upon his release to search for and provide said purported documents, it is respectfully requested that a new briefing schedule be proposed. We cannot confirm the date that Plaintiff will be released so we cannot propose a new briefing schedule at this time. Should Your Honor's staff have any questions, I can be reached at (914) 995-3577. Thank you.

Respectfully submitted,

JOHN M. NONNA

Westchester County Attorney

By: 

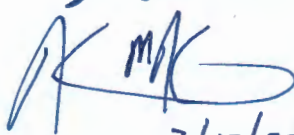
Irma Cosgriff (IC 1320)

Associate County Attorney

IWC/st

cc: Overnight Delivery and Regular Mail
LARRY JOHNSON, JR. #409369
Osborn-CI, 335 Biton Road
PO Box 100
Somers, CT 06071

Kitt can incorporate his request for the relief sought herein in his Summary Judgment papers. Plaintiff can respond as part of his opposition to the motion.

So Ordered -

3/12/20

AFFIDAVIT OF SERVICE BY OVERNIGHT MAIL (UPS)

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

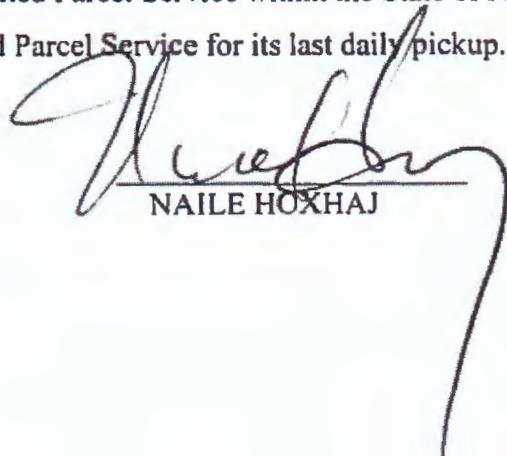
NAILE HOXHAI, being duly sworn, deposes and says:

I am not a party to this action, I am over 18 years of age; I am employed in White Plains, New York.


On March 10, 2020, I served a copy of a letter to Hon. Karas (RE: Johnson v. Doty, et al. 15-cv-7823(KMK) on the following:

Larry Johnson, Jr. #409369
Osborn – CI
335 Biton Rd, PO Box 100
Somers, CT 06071
(by regular mail also – USPS)

being the address designated for that purpose, by overnight mail by depositing a true copy of same enclosed in a prepaid, properly addressed wrapper, in an official depository under the exclusive care and custody of United Parcel Service within the State of New York prior to the time designated by United Parcel Service for its last daily pickup.


NAILE HOXHAI

Sworn to before me this
10th day of March 2020



NOTARY PUBLIC

